IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.428 OF 1992

The State of Maharashtra ...Appellant.

V/s

Nagandas Hargovindas Kankiya
aged 53 years, R/o. Nathani Steel
and Scrap Compound, Tank Bunder,
Dharukhana, Near Shivree Police
Station, Bombay - 10. ...Respondent.

Mr. D.P. Adsule, APP for the appellant

None for the respondent.

CORAM: V.M. KANADE, J.
DATE : 10th December, 2004

ORAL JUDGMENT:

1. Heard the learned APP appearing on behalf of the appellant - State.

2. State is challenging the Judgment and Order passed by the Metropolitan Magistrate, 35th Court, V.T. Railway, Bombay in Criminal Case No.57/S/82. By the said Judgment and Order, the Trial Court acquitted the accused of the offence punishable under section 3(a) of the R.P. (U.P.) Act 1966.

3. The accused, admittedly, was a dealer in scrap material. P.W.1 - Ramkrishna Devane, Sub-Inspector of RPF has stated that he received information that the accused was possessing railway property without proper

authorization. He obtained a search warrant and took search of the shop of the accused and seized the property. P.W. 3 - Saeed Yusuf took inspection of the seized muddemal property and issued a certificate that the property belonged to railways. Similarly, P.W.4 - Keshav Sonawane also issued a certificate to that effect. P.W. 3 and 4 however, in their cross-examination, have admitted that they cannot say with certainty that the seized muddemal property is railway property or not. Moreover, the accused admittedly was dealing in the business of scrap and his specific case is that he had purchased the railway property in auction and had produced receipts to show the purchase made by him which are at Exhibits 10 and 11. Further, two receipts - Exhibits-12 and 13 have been produced showing that other material was purchased from the Quality Steel Corporation and which was stored as a scrap material.

4. Considering the admissions given by P.W. 3 and 4 who are examined as experts by the prosecution and the documentary evidence produced by the accused that he had purchased the property in auction, in my view, the prosecution has failed to prove that the accused was in unlawful possession of the seized property. The Trial Court has correctly assessed the evidence on

record and has acquitted the accused. I do not see any reason to interfere with the said Order. Appeal is accordingly dismissed.

V.M. KANADE, J.